No. 205.

Brief of Atty. Gen.l (Pradt) for Appellant.

Filed Oct. 27, 1897.

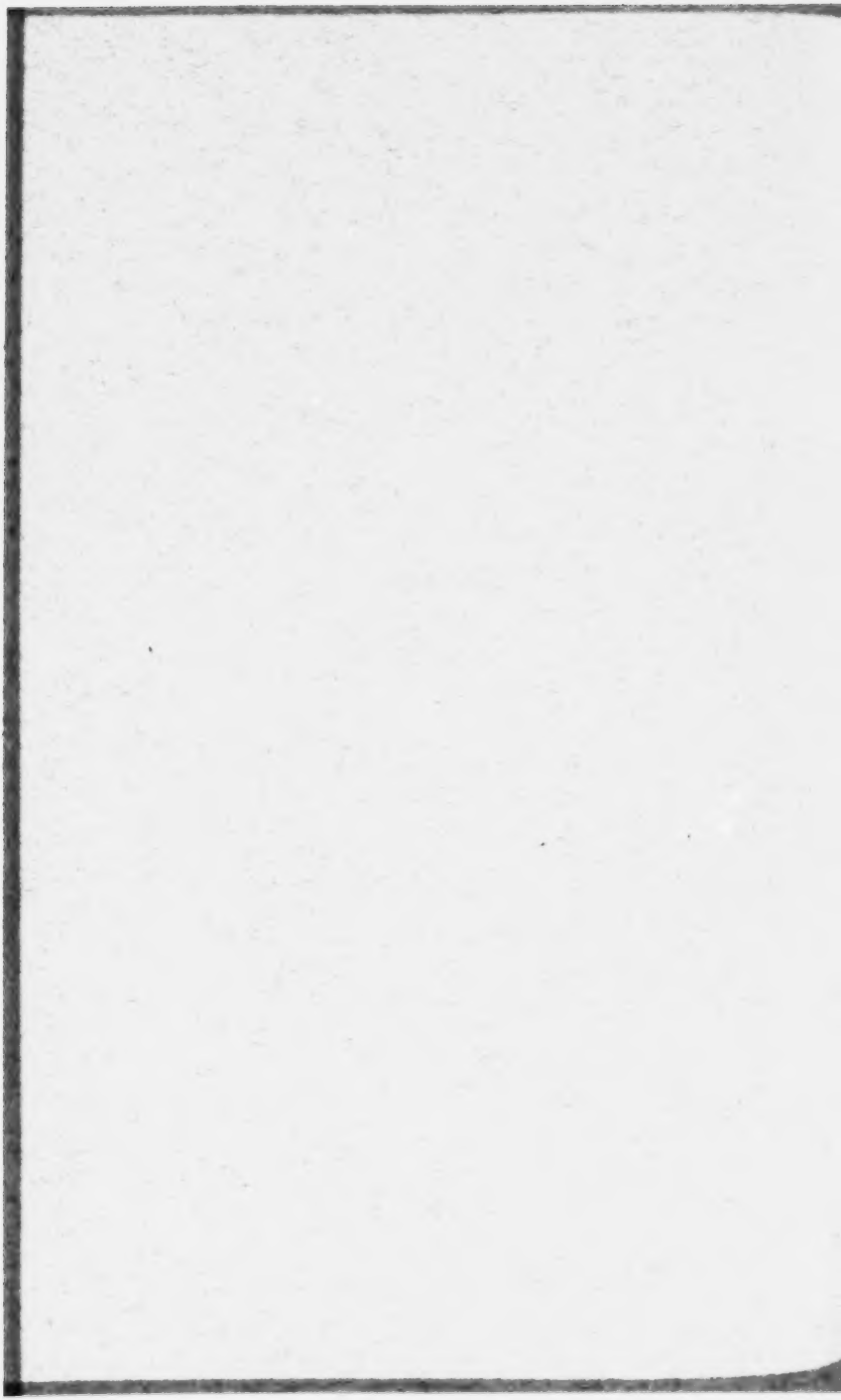
In the Supreme Court of the United States.

OCTOBER TERM, 1897.

THE UNITED STATES, PLAINTIFF IN error,
v.
PATRICK HENRY WINSTON. } No. 205.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF OF APPELLANT.



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In the Supreme Court of the United States.

OCTOBER TERM, 1897.

THE UNITED STATES, PLAINTIFF IN ERROR,
v.
PATRICK HENRY WINSTON. } No. 205.

APPELLANT'S BRIEF.

STATEMENT.

This case was originally brought by appellee in the United States circuit court for the eastern division of the district of Washington, and judgment there going against them was by these appellants appealed to the circuit court of appeals for the ninth circuit, from which, judgment again going against them, they have appealed to this court.

The items described in the second and third findings of fact of the circuit court (Rec., pp. 15 and 16), having been disallowed by that court, and so much of the items in finding 7 (Rec., p. 17) as pertains to the defense of the case of *Ross* v. *Eells*, having been disallowed by the circuit court of appeals, are not at issue in this appeal.

ASSIGNMENT OF ERRORS.

The plaintiffs in error rely upon the following errors in the record:

I.

The circuit court of appeals erred in affirming the judgment and decision of the circuit court, holding and deciding that the defendant in error was entitled to recover the sum of $187.21 in addition to the amount paid him or any sum for services in the case of the United States against the steam tug *Pilot*. (VII, p. 45; Finding 4, p. 16, Rec.)

II.

The circuit court of appeals erred in affirming the judgment and decision of the circuit court, holding and deciding that the defendant in error was entitled to recover the sum of $310 as compensation for his services in the case of Dunsmuir against Bradshaw. (VIII, p. 45; Finding 6, p. 16, Rec.)

III.

The circuit court of appeals erred in affirming the judgment and decision of the circuit court, holding and deciding that the said defendant in error was entitled to recover for his services in the case of Gee Lee the sum of $250. (XVI, p. 46; Finding 5, p. 16, Rec.)

IV.

The circuit court of appeals erred in affirming the judgment and decision of the circuit court, holding and deciding that, upon the facts as found by the court, the

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defendant in error was entitled to recover any sum whatever or was entitled to any judgment whatever for his services in the case of the steam tug *Pilot*, in the case of Dunsmuir against Bradshaw, and in the case of Gee Lee.

V.

The circuit court of appeals erred in refusing to reverse the judgment and decision of the circuit court of the United States for the district of Washington, holding, that defendant in error was entitled to recover for his services in the aforesaid cases and in refusing to render judgment in that behalf for these plaintiffs in error.

ARGUMENT.

We concede, upon the authority of *United States* v. *Smith* (158 U. S. R., 346), that the judgment of the courts below allowing mileage, as set out in finding 7 (Rec., p. 17), is correct.

There are, therefore, left in issue in this case only those items pertaining to appellee's service as a district attorney in the circuit court of appeals sitting at a point outside the territorial lines of his district.

Briefs fully setting forth the position of the Government on this question have already been filed in this court in the cases of *United States* v. *Carter* and *United States* v. *Herron*, submitted at this time, and it is not deemed necessary in this case to add anything to what has been said there.

LOUIS A. PRADT,
Assistant Attorney-General.

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